

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Detelin Draganov,

Plaintiff,

V.

State of Washington,

Defendant.

CASE NO. C10-1336 RSM

ORDER DISMISSING CIVIL  
RIGHTS COMPLAINT AND  
STRIKING MOTION TO APPOINT  
COUNSEL AS MOOT

Plaintiff Datelin Draganov proceeds *pro se* and *in forma pauperis*. He filed a complaint 42 U.S.C. § 1982 against the State of Washington, alleging that the Washington Supreme Court had denied him discretionary review and justice. (Dkt. #3.) Plaintiff requested compensatory damages and to vacate his convictions, fees, bails, and judgments. *Id.*

The matter was referred to United States Magistrate Judge Brian A. Tsuchida on September 1, 2010. (Dkt. #5.) Upon reviewing Plaintiff's complaint, Judge Tsuchida determined that Plaintiff's complaint failed to state a claim upon which relief could be granted and granted leave to amend. (Dkt. #6.) Judge Tsuchida informed Plaintiff that to cure the

1 deficiencies he had identified, Plaintiff's amended complaint would need to include the  
2 following: (1) "he must assert specific, plausible facts to support allegations of a violation of a  
3 constitutionally or federally protected right and the resulting harm alleged in the complaint;" (2)  
4 "he must identify a state actor and may not name the State of Washington as a defendant;" and  
5 (3) he must "address when he knew or had reason to know of the injury which is the basis of the  
6 action. *Id.* Judge Tsuchida also informed plaintiff that he could not sue judicial officers for acts  
7 taken within their judicial discretion, nor could he challenge the lawfulness of his conviction  
8 unless the conviction had been reversed, expunged, invalidated, or impugned by the grant of a  
9 writ of habeas corpus. *Id.* Plaintiff was instructed to file an amended complaint by October 4,  
10 2010. *Id.*

11 On October 5, 2010, Judge Tsuchida issued a Report and Recommendation advising the  
12 Court to dismiss Plaintiff's complaint prior to service under § 1915(e)(2)(B)(ii) because plaintiff's  
13 complaint failed to state a claim for which relief could be granted and because plaintiff had failed  
14 to file an amended complaint within the time-period allowed by the Court. (Dkt. #8.) Plaintiff  
15 was given until October 26, 2010 to file an amended complaint and any objections to the Report  
16 and Recommendation. *Id.* Plaintiff filed a 1983 Civil Rights Complaint (Dkt. #9) the same day  
17 that Judge Tsuchida filed his Report and Recommendation. On October 15, 2010, Plaintiff filed  
18 A Proposed Amended Complaint (Dkt. #10) and a Motion to Appoint Counsel (Dkt. #11).  
19 Plaintiff did not file objections to the Report and Recommendation.

20 The claims asserted in Plaintiff's Amended Complaint and 1983 Civil Rights Complaint  
21 are substantially similar and appear to relate to a detention that occurred following a state court  
22 proceeding. (Dkt. #10, p. 5) (referring to a "Redmond Court – case 30007 CR – November 2007  
23 – April 2009 and after that"). In his Amended Complaint, Plaintiff alleges deprivation of  
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1 property and liberty, other Fourth Amendment due process violations, Eighth Amendment  
2 violations for cruel and unusual punishment, First Amendment violations, Sixth Amendment  
3 violations, Fifth Amendment violations, and that the Court in his criminal conviction and/or  
4 probation revocation hearing did not have jurisdiction over his case. (Dkt. #10). In his 1983  
5 Civil Rights Complaint, Plaintiff alleges the same violations as he alleges in his Amended  
6 Complaint as well as criminal violations under 18 USC §§ 241, 242, & 245. (Dkt. #9). He also  
7 includes allegations of unlawful detention, malicious prosecution, abuse of authority, and judicial  
8 misconduct. *Id.* In both complaints, Plaintiff requests \$3,000,000 in compensatory relief and that  
9 convictions, judgments and fees issued against him be vacated.

10 To support his allegations, Plaintiff asserts in his Amended Complaint that he was  
11 subjected to a “a year and 3 months for alleged ph. call – no police report, no crime, no evidence  
12 whatsoever” and that he was “sent without reason in custody.” (Dkt. #10). He also claims that  
13 there was “no translator at the revocation – zero tolerance case, no probation, nor prob. officer at  
14 all.” *Id.* Finally, he claims “no jurisdiction over this matter as per prosecutor on 8/15/08  
15 hearing.” *Id.* His 1983 Civil Rights Complaints asserts the same factual allegations.

16 From the little detail that has been provided about the factual circumstances giving rise to  
17 Plaintiff’s allegations, it appears that Plaintiff is attempting to challenge his prior conviction  
18 and/or incarceration following a revocation hearing. As Judge Tsuchida explained in his two  
19 previous orders, section 1983 is not a proper vehicle for challenging state court convictions. *See*  
20 *Heck v. Humphrey*, 512 U.S. 477, 486-86 (1994). To recover damages for an allegedly  
21 unconstitutional conviction or imprisonment, or for other harm caused by actions that would  
22 render a conviction or sentence invalid, a section 1983 plaintiff must show that the conviction or  
23 sentence was reversed on appeal, expunged by executive order, declared invalid by a state  
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1 tribunal, or called into question by the issuance of a writ of habeas corpus by a federal court. *Id.*  
2 Since Plaintiff has failed to provide the forgoing evidence, and because Plaintiff has asked this  
3 court to vacate his conviction, the Court is compelled to conclude that Plaintiff's conviction still  
4 stands. As such, relief cannot be granted under section 1983.

5 Plaintiff has been twice advised of the deficiencies in his complaint and has been unable  
6 to correct them. The Court finds that Plaintiff simply cannot assert facts sufficient to state a  
7 claim under section 1983. Further amendments to the complaint would be futile. Accordingly,  
8 his action is DISMISSED without prejudice and without leave to amend prior to service under  
9 §1915(e)(2)(B)(ii). Plaintiff's Motion to Appoint Counsel (Dkt. #11) is STRICKEN as moot.

10 The Clerk is directed to close this case.

11 Dated this 1 day of November 2010.

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14 RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE  
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